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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/700,968	07/11/2002	Christhoper J Pratt	420115-56 LB13/SC18	9525

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EXAMINER

VALENTI, ANDREA M

ART UNIT PAPER NUMBER

3643

DATE MAILED: 06/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application N .

09/700,968

Applicant(s)

PRATT, CHRISTHOPER J

Examiner

Andrea M. Valenti

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,6 and 8-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,6,8,9 and 12-18 is/are rejected.
- 7) ☒ Claim(s) 10 and 11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4, 6, and 8-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Japanese Patent JP 403166428 to Namiki et al.

Regarding Claim 1, Namiki et al teaches a planting system for regulating the supply of water to a plant. The system has a liner (#3) containing a volume of plant growing medium (#12) the liner being impermeable to water; drainage means adapted to drain water from the plant growing medium contained within the liner and convey the drained water to a desired location; wherein the drainage means is a pipe (#13 and #6), the section of pipe is located within the liner is surrounded by a particulate material (#11) and the particulate material is surrounded by a dispersing layer (#10 and 9).

Regarding Claim 4, Namiki et al teaches the pipe is provided with perforations (English abstract #13).

Regarding Claim 6, Namiki et al teaches the particulate material is gravel (English abstract #11).

Regarding Claims 8 and 9, Namiki et al teaches that the paving system has at least an impervious surface layer (#1) provided with an island in the form of a hole or trench for receipt of a plant in combination with a planting system as claimed in claim 1.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent JP 403166428 to Namiki et al.

Regarding Claim 2, Namiki et al is silent on the liner being a plastic material. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings since the modification is merely the selection of a known material for intended use and is merely an engineering design choice selecting a light weight and durable material and does not present a patentably distinct limitation.

Claims 12 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,099,603 to Rigsby in view of U.S. Patent No. 968,226 to Ziller.

Regarding Claims 12 and 13, Rigsby teaches applicant's broadly presented claim limitation of a paving system with at least a surface layer provided with an island in the form of a hole or trench for receipt of a plant (Fig. 9), in combination with a planting system for regulating the supply of water to a plant, the planting system has a liner containing a volume of plant growing medium (#2); the liner is impermeable to water; the planting system has drainage means adapted to drain water from the plant growing medium contained within the liner and convey the drained water to a desired location

(#5); the liner serves to prevent drainage of water from the medium into the surrounding subsoil; and the paving system has a permeable layer providing an upper surface (#10 is the inherent grass layer); at least one supporting substrate layer under which is permeable to liquid (#10 the soil under the grass layer). Rigsby is silent on a duct means for allowing the regulated passage of water from the substrate layer to the plant growing medium. However, Ziller teaches a duct for conveying sub-soil drainage. It would have been obvious to one of ordinary skill in the art to modify the teachings of Rigsby with the teachings of Ziller at the time of the invention since it is old and notoriously well-known in the art to direct sub-surface drainage with conduits and to direct water to plants to prevent flooding in certain areas to provided the proper irrigation to promote plant development.

Regarding Claim 15, Rigsby as modified teaches the liner is a plastic material (Col. 2 line 7),

Claims 14 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,099,603 to Rigsby as applied to claim 12 above, and further in view of Japanese Patent JP 403166428 to Namiki et al.

Regarding Claim 14, Rigsby as modified is silent on the drainage means is a pipe and the section of the pipe located within the liner is surrounded by particulate material. However, Namiki et al teaches a pipe in a liner and the pipe is surrounded by particulate material (Namiki #13 and 6). It would have been obvious to one of ordinary skill in the

art to modify the teachings of Rigsby with the teachings of Namiki et al for the advantaged of controlling raindrop collection as taught by Namiki et al.

Regarding Claim 16, Rigsby as modified teaches the pipe is provided with perforations (Namiki #13).

Regarding Claim 17, Rigsby as modified teaches the particulate material is gravel (Namiki #11).

Regarding Claim 18, Rigsby as modified teaches the particulate material is surrounded by a dispersing layer (Namiki #10 and 9).

#### ***Allowable Subject Matter***

Claims 10 and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 1, 2, 4, 6, 8, 9 and 12-18 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

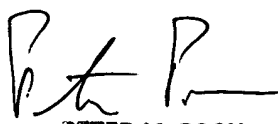
TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone numbers for the organization where this application or proceeding is assigned are 703-306-4195 for regular communications and 703-305-0285 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-4357.

AMV  
June 9, 2003

  
PETER M. POON  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600